



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER
	10

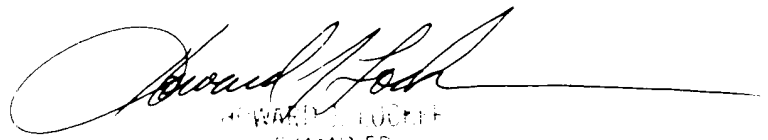
DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents.

**A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET
TO EXPIRE TWO MONTHS, DAYS FROM THE DATE OF THIS LETTER.**

(see attached communication, PTO 892, and references)


HOWARD J. LOCKE
EXAMINER
CHIEF ART UNIT 1661

09/255107
PTOL 90 (REV 10 80)

U.S. Patent and Trademark Office
Washington, D.C. 20503

The claimed availability of claim 1 of all claims is withdrawn in this communication set forth below.

This communication sets forth a new requirement for information under 37 CFR 1.105 by the Office. A new statutory period for response is set to expire two months from the date of mailing of this communication.

35 U.S.C. 102

The claimed rose cultivar 'Haryup' is described in Breeder's Right number USDBR R05511 which was filed on November 03, 1994 and published on January 14, 1995 (more than one year prior to the filing date of the instant application) and which matured into Grant/Reg. Number R05511 on August 18, 1996, which was published on October 14, 1996 (more than one year prior to the filing date of the instant application).

The claimed rose cultivar 'Haryup' is described in Breeder's Right number USDBR 00501357 which was filed on October 23, 1991 (more than one year prior to the filing date of the instant application) and which matured into Grant/Reg. Number 5167 on December 20, 1993 which was published on January 19, 1994 (more than one year prior to the filing date of the instant application).

The claimed rose cultivar 'Haryup' is described in Breeder's Right number USDBR 0050231 which was filed on October 11, 1996 (more than one year prior to the filing date of the instant application) with denomination proposed and accepted on September 15, 1997 (more than one year prior to the filing date of the instant application).

the art is accessible to persons concerned with the art to which the document relates. 35 U.S.C. § 102(b) (55 Fed. Reg. 221, 226, 240 (US99:7997) (1999) (2019) (MPL) section 2118.

For example, EPO publishes the application number, grant number and publication species of plant and variety denomination for EPC. Other fees and copies of the grant and application are obtainable through the plant variety rights journal. Plant varieties are also entered in the Register of Community Plant Variety Rights and Register of Applications for Community Plant Variety Rights, both of which are open to the public. Thus, information concerning the claimed cultivar in the form of the publications noted above, and the EPO, is available to interested persons of ordinary skill in the art.

A printed publication can serve as a statutory bar under 35 U.S.C. § 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. *Ex parte Schumacher*, 2001 PTA 013518PQ (35 USPQ2d 1962) (1992). If one skilled in the art could reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure. See *Ex parte Newberry*, 1972 PTA 004018 (35 USPQ2d 1962) (1992). The issue is not whether the claimed cultivar Siokora was on public use or sale in the United States or whether Siokora seeds were available to a skilled artisan, where in the world such that he/she could attain them and reproduce the claimed cultivar disclosed in the cited publications.

11/14/94 10:10 AM
11/14/94 10:10 AM

1. The Examiner has reviewed the application and the prior art. The Examiner has determined whether the references are relevant. If the plant is a new plant, the Examiner has determined whether the application, or proposed denomination of any, or any other party, combined with prior knowledge in the prior art, would enable a person of ordinary skill in the art to reproduce the claimed plant. The Examiner has determined whether the claimed plant is a publicly available plant. Electronic and paper search within the office has not been conducted to determine if the claimed plant was on sale anywhere in the United States. The claimed plant may have been sold at the wholesale level under a different name, or even distributed to interested parties on the internet, if charge. Since the inventor and the assignee, if applicable, of the claimed plant are in a better position to know when, if ever, the claimed plant was made publicly available, the Examiner is requiring this information per the attached Requirement for Information Under 37 CFR 1.105.

2. Requirement for information under 37 CFR 1.105 is attached. This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months from the mailing date of this communication. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

USPTO 12/31/00

12/31/00

The USPTO will no longer accept drawings that are larger than 8 1/2" x 11" and that do not meet the requirements of 37 CFR 1.85 and 37 CFR 1.86, and to new drawings filed on or after January 1, 2001. Applications filed thereafter, in particular 37 CFR 1.85 and 37 CFR 1.86.

Photographs must be developed on paper meeting the sheet size requirements of paragraph (f) of this section and margin requirements of paragraph (g) of this section.

The USPTO no longer accepts photographs mounted on Bristol board or other materials. Further information on the new rules is available on the USPTO web site at www.uspto.gov.

SPECIAL UPDATE ON DRAWINGS!

The rules for submitting drawings, 37 CFR 1.85 and 37 CFR 1.86, were amended effective November 29, 2000. The USPTO has delayed enforcement of these changes until October 01, 2001. Drawings in compliance with old rules will be accepted through September 30, 2001. Complete details can be found in the May 22, 2001, Official Gazette (1246 OG 106-107) on the internet at:
<http://www.uspto.gov/web/offices/com/sol/og/2001/week21/patwavr.htm>.

Applicants are advised of the new procedures for amending the presentation and claim under 37 CFR 1.121. The new procedures are optional until February 28, 2001 and **mandatory** beginning March 01, 2001. Information on the new procedures is available on the internet at:
<http://www.uspto.gov/web/offices/dsp/foia/patent/index.html>.

...should inform the communication from the examiner
...connected to examiner Howard J. Locker whose telephone number is
703-308-4200 and whose normal work hours are Monday through Thursday
8:00 a.m. to 5:00 p.m.

...attempts to reach the examiner by telephone are unsuccessful, the
...supervisor Mr. Bruce Campbell can be reached at 703-308-4205.


...of a general nature or told by the status of the
...should be directed to the Group receptionist whose telephone
number is 703-308-4200.

TELECOPY/FACSIMILE TRANSMISSION

...this application may be submitted to Group 1661 by
...transmission. Papers should be faxed to this Group via the 4D fax
...faxing of such papers must conform to
...published in the Official Gazette, 1096-00-50 (November 15, 1989),
...numbers 303-308-4585 or 303-308-5592.

...of the

...


HOWARD J. LOCKER
EXAMINER
GROUP ART UNIT 1661

REQUIREMENT FOR INFORMATION UNDER 37 CFR 1.105

Applicant and the assignee (if applicable) of this application are hereby notified under 37 CFR 1.105 to provide the following information that the Office may deem necessary to the examination of the application.

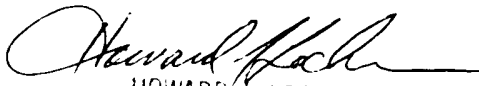
The information is required to determine whether the claimed plant variety (cultivar) was publicly available prior to the filing date of the instant application for United States Plant Patent.

In response to this requirement, please provide any information available regarding the sale or other public distribution of the claimed plant variety anywhere in the world, including the date(s) of any sale or other public distribution. Also, please provide copies of the applications, published or proposed denominations, and published breeder's right grants. The Office does not maintain a collection of Breeder's Rights documents and they are not readily obtainable electronically. It is reasonable to expect that Applicant or assignee (if applicable) can readily obtain the requested documents and information.

The fee and certification requirement of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to the payments within the scope of this requirement under 37 CFR 1.105 that are included in the first complete communication responding to this requirement, and supplemental replies subsequent to the first communication responding to this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

Where an applicant is unable to meet the requirements of this requirement, the applicant must be made aware of the requirement in good faith under 37 CFR 1.56. Where applicant does not have the ability to readily obtain an item of required information, a statement that the item is known or not readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and there is a shortened statutory period of 2 months. EXTENSIONS OF THIS PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).


HOWARD J. LOCKER
EXAMINER
GROUP ART UNIT 2661